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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,431	01/22/2001	William M. Johns	111788.00101	9036

27557 7590 07/13/2006

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EXAMINER	
TRUONG, LAN DAI T	

ART UNIT	PAPER NUMBER
2152	

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/765,431	JOHNS ET AL.	
	Examiner	Art Unit	
	Lan-Dai Thi Truong	2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *03* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 January 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/05/2006 has been entered.

2. This action is response to communications: application, filed on 01/22/2001; amendment filed 04/05/2006. Claims 1-14 are pending; claim 1 is amended

3. The applicant's arguments file on 04/05/2006 have fully considered but they are moot in view with new ground for rejections

Claim rejections-35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matters such as "entry servers," and "the pseudo message" which were not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claim 1, the phrase "...performance monitor process watching network activity to and from the application servers to entry servers for connection to the end user's workstations..." renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. Examiner does not clearly understand where the end user's workstations be connected to, See MPEP § 2173.05(d).

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 recites the limitation "the log" in page 2, line 12. There is insufficient antecedent basis for this limitation in the claim

Claim rejections-35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or descrybed as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C 103(a) as being un-patentable over Lamberton et al. (U.S. 6,931,452) in view of Mangipudi et al. (U.S. 7,058,704) further in view of Caccavale (U.S. 5,459,837)

Regarding to claim 1:

Lamberton discloses the invention substantially as claimed, including a method, which can be implemented in a computer hardware or software code for monitoring performance and availability of application servers on a network, including a percentage of time that each of the application servers is available to an end user relative to the time the application servers are intended to be available and a responsiveness of the application servers to the end user in terms of a delay between the end user's entering data into a workstation keyboard and a response from one of the application servers with new data on the user's workstation screen, the method comprising:

Running at least one performance monitor process on the network (Lamberton discloses a monitoring device is operable to monitor network routers: abstract, lines 9-15), said at least one performance monitor process watching network activity to and from the application servers to entry servers for connection to the end user's workstation (Lamberton discloses method for performing monitor process watching network activities of routers causes selecting "an available router" which is equivalent to "entry server" from the set of possible routers for establishing connection between a workstation and "a host" which is equivalent to "application server": abstract, lines 1-15; column 3, lines 57-67; figure 1, items 10, 12, 14, 26, 28, 16, 18, 20)

However, Lamberton does not explicitly disclose creating a transaction response time log and activity audit trail for the network; consolidating information from the log

In analogous art, Mangipudi discloses communications between clients and plurality of host sites; each host site includes log file stores information such as response time and/ how long the host site takes to complete a specified request. Mangipudi also discloses network resources can be measured and audit reports can be generated, See: (figure 1, item 102, 208A, 208B, 208C, 208D; column 6, lines 35-47; column 1, lines 25-30)

Further more, Mangipudi discloses a monitoring system includes an accumulator which performs combining information from log files to deposit into an SLA database, see (column 4, lines 1-31)

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Mangipudi's ideas of combination information from log files with Lamberton's system in order to provide an efficiency reporter system, see (Mangipudi: column 3, lines 19-34)

However, Lamberton- Mangipudi does not explicitly disclose establishing a connection from the network monitor manager process to at least one performance monitor process to control at least one performance monitor (in analogous art, Caccavale discloses communications between " a Broker-Performance Mechanism" which is equivalent to " network monitor manager" and "probes" which execute "network monitor manager processes" in various clients such as measuring response times of the clients; the Broker-Performance Mechanism places probes into various clients and requests the probes to perform measuring client response times: abstract lines 1-15) to send a pseudo message for tracking time in the network to an entry server to determine said network availability: (Caccavale discloses the Broker-performance Mechanism makes its "suggestion" which is equivalent to "pseudo message" to "a client" which is equivalent

to "entry server" to determine the best suited server, at particular time, to perform the particular service for the request client based upon results of analyzing measured response times: column 3, lines 1-31); receiving the pseudo message to determine where problems exist within the network connection for the entry server: (Caccavale discloses the broker-performance mechanism sends its "alert" which is equivalent to "pseudo message" to indicate the potential problems in the network: column 6, lines 47-54)

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Caccavale's ideas of measuring response times to determine available network and network problems, and then sending messages to indicate available network and network problems with Lamberton- Mangipudi's system in order to provide an efficiency network monitoring and analyzing system, see (Caccavale: column 1, lines 7-14)

Regarding to claim 3:

In addition to rejection in claim 1, Lamberton- Mangipudi- Caccavale further discloses running a client-server monitoring process on a server dedicated to the client-server monitoring process: (Caccavale discloses the broker-performance mechanism requests probes to perform network monitoring such as measuring response times: column 1, lines 1-67; column 2, lines 1-67)

receiving, in the client-server monitoring process, information about transactions executed by production applications on the network: (Caccavale discloses the broker-performance mechanism stores collected measuring response times for future analyzing: column 1, lines 1-67; column 2, lines 1-67; column 3, lines 1-31)

determining performance and availability of the production applications in accordance with the information received (Caccavale discloses the broker-performance mechanism makes its suggestion about the best suited server for service request based upon results of analyzing the received measuring response times: column 1, lines 1-67; column 2, lines 1-67; column 3, lines 1-31)

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Caccavale's ideas of measuring response times to determine available network and network problems with Lamberton- Mangipudi's system in order to provide an efficiency network monitoring and analyzing system, see (Caccavale: column 1, lines 7-14)

Claims 4-8 and 12-13 are rejected under 35 U.S.C 103(a) as being un-patentable over Lamberton-Mangipudi-Caccavale in view of Badt Jr. (U.S. 2003/0133417)

Regarding to claim 4:

Lamberton-Mangipudi-Caccavale discloses the invention substantially as disclosed in claim 3, but does not explicitly teach running a filtering agent on each or on behalf of each of the production applications to convert the information from application logs into a form usable by the client-server monitoring process (Badt: [0086-0088], features a signal conversion aspect of Badt to convert signals into network monitor compatible format)

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Badt's ideas of converting signals into network monitor compatible format with Lamberton-Mangipudi-Caccavale's system in order to provide an efficiency network monitoring and analyzing system

Regarding to claim 5:

In addition to rejection in claim 4, Lamberton-Mangipudi-Caccavale-Badt further discloses the network comprises a mainframe having at least one logical partition which generates an application log (Badt: [0178]); and the application log through a mainframe monitoring process (Badt: [0178]; [0174])

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Badt's ideas of using application log through monitoring process with Lamberton-Mangipudi-Caccavale's system in order to provide an efficiency network monitoring and analyzing system

Regarding to claim 6:

In addition to rejection in claim 5, Lamberton-Mangipudi-Caccavale-Badt further discloses the application log comprises transaction entries having end-user addresses (Badt: [01781); and step (1) comprises categorizing the transaction entries by the end-user addresses (Badt: [0174]; [0178])

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Badt's ideas of using application log comprises transaction entries with Lamberton-Mangipudi-Caccavale's system in order to provide an efficiency network monitoring and analyzing system

Regarding to claim 7:

In addition to rejection in claim 6, Lamberton-Mangipudi-Caccavale-Badt further discloses generating a performance report for the network through an administrative process and

making the report available over a data network (Badt: [0178], wherein over available capacity of the network is generated)

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Badt's ideas of generating a performance report for the network with Lamberton-Mangipudi-Caccavale's system in order to provide an efficiency network monitoring and analyzing system

Regarding to claim 8:

In addition to rejection in claim 7, Lamberton-Mangipudi-Caccavale-Badt further discloses wherein the data network comprises the Internet (Badt: [0148])

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Badt's ideas of monitoring the network performances with Lamberton-Mangipudi-Caccavale's system in order to provide an efficiency network monitoring and analyzing system

Regarding to claim 12:

In addition to rejection in claim 4, Lamberton-Mangipudi-Caccavale-Badt further discloses filtering agent detects processes running on the network and cross-references the detected processes to known processes, and further comprising forming an event correlation engine in accordance with the detected processes (Badt: [0086-0088]; [0174])

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Badt's ideas of using correlation engine to collect monitoring information in order to detected processes with Lamberton-Mangipudi-Caccavale's system in order to provide an efficiency network monitoring and analyzing system

Regarding to claim 13:

In addition to rejection in claim 12, Lamberton-Mangipudi-Caccavale-Badt further discloses filtering agent detects changes to the processes running on the network, and further comprising maintaining the event correlation engine in accordance with the detected changes to the processes (Badt: [0086-0088]; [0174]; [0178])

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Badt's ideas of using correlation engine to collect monitoring information in order to detected processes with Lamberton-Mangipudi-Caccavale's system in order to provide efficiency network monitoring and analyzing system

Claim 2 is rejected under 35 U.S.C 103(a) as being un-patentable over Lamberton-Mangipudi-Caccavale in view of Hemphill (U.S. 5,696,895)

Regarding to claim 2:

Lamberton-Mangipudi-Caccavale discloses the invention substantially as disclosed in claim 1, but does not explicitly teach detecting at least one possibly failed component of the network; sending a message from the at least one availability monitor process to the at least one possibly failed component; and determining whether the at least one possibly failed component has failed.

In an analogous art, Hemphill teaches of plurality of systems exchanging heartbeat messages, the recovery agents are doing monitoring of network statuses through these heartbeat messages. In event of a potential failure the recovery agent will no longer receive heartbeat messages, a confirmation message is sent out to the device being monitored to verify its status,

and if there is no response, the device being monitored is determined to have failed: (column 6, lines 1-67)

It would have been obvious to the person ordinary skill in the gut at the time of the invention to combine Hemphill's ideas of detecting network failure component and sending message to indicate the failure of network component with Lamberton-Mangipudi-Caccavale's system in order to provide an efficiency network monitoring and analyzing system such as it would results in enhancing the error detection capabilities in the network as there is an extra verification step to make sure there is indeed an error

Claims 9-11 are rejected under 35 U.S.C 103(a) as being un-patentable over Lamberton-Mangipudi-Caccavale-Badt in view of Dattatri (U.S. 2002/0049815)

Regarding to claim 9:

Lamberton-Mangipudi-Caccavale-Badt discloses the limitation substantially as claimed, as described in claim 8, but does not explicitly teach receiving, in the client-server monitoring process, information about transactions executed by ecommerce applications on the network; and determining performance and availability of the e-commerce applications in accordance with the information received through an e-commerce monitoring process.

Dattatri teaches a network monitoring system operating under e-commerce environment keeping track of network transactions, specifically, Dattatri teaches a system for commercial communications in which communication between trading partners is tracked so that information goes to a desired trading partner in a timely manner and in' which receipt can be verified. Dattari teaches: receiving, in the client-server monitoring process, information about transactions executed by e-commerce applications on the network (Dattatri: [0111]; [0110]); and determining

performance and availability of the e-commerce applications in accordance with the information received in step (n) through an e-commerce monitoring process (Dattatri: [0l 10]; [0115]; [0078]).

It would have been obvious to combine teachings of Lamberton -Mangipudi-Caccavale-Badt'ideas and Dattatri's ideas in order to monitor transactional processes in an e-commerce environment for potential errors (Dattatri, [0008]; [0017]).

Regarding to claim 10:

In addition to rejection in claim 9, Lamberton-Mangipudi-Caccavale-Badt- Dattatri further discloses wherein at least one of the e-commerce applications makes at least one Web page accessible to customers, and placing code in the at least one Web page, the code sending time stamps to the client-server monitoring process when the code is accessed.

Dattatri teaches a network monitoring system operating under e-commerce environment keeping track of network transactions, specifically, Dattatri teaches a system for commercial communications in which communication between trading partners is tracked so that information goes to a desired trading partner in a timely manner and in which receipt can be verified. Dattatri teaches: the e-commerce applications makes at least one Web page accessible to customers, and placing code in the at least one Web page, the code sending time stamps to the client-server monitoring process when the code is accessed (Dattatri: [0069]; [00881).

It would have been obvious to combine teachings of Lamberton -Mangipudi-Caccavale-Badt'ideas and Dattatri's ideas in order to monitor transactional processes in an e-commerce environment for potential errors (Dattatri, [0008]; [0017]).

Regarding to claim 11:

In addition to rejection in claim 10, Lamberton-Mangipudi-Caccavale-Badt- Dattatri further discloses comprising providing a central data repository, and wherein the network monitor manager process, the client-server monitoring process, the mainframe monitoring process, the administrative process, and the a-commerce monitoring process communicate with one another through the central data repository

Dattatri teaches a network monitoring system operating under e-commerce environment keeping track of network transactions, specifically, Dattatri teaches a system for commercial communications in which communication between trading partners is tracked so that information goes to a desired trading partner in a timely manner and in which receipt can be verified. Dattatri teaches the e-commerce monitoring process communicate with one another through the central data repository (Dattatri: Fig 1, 2, wherein system is communicating through the repository for message back ups).

It would have been obvious to combine teachings of Lamberton -Mangipudi-Caccavale-Badt'ideas and Dattatri's ideas in order to monitor transactional processes in an e-commerce environment for potential errors (Dattatri, [0008]; [0017])

Claim 14 is rejected under 35 U.S.C 103(a) as being un-patentable over Lamberton-Mangipudi-Caccavale-Badt in view of Lin et al. (U.S. 6,405,250)

Regarding to claim 14:

Lamberton-Mangipudi-Caccavale-Badt discloses the invention substantially as disclosed in claim 13, but does not explicitly teach the performance or the availability of one of the production applications is impaired, determining and reporting a cause of impairment

However, Lin teaches a network monitoring system based on a. series of agents reporting to central server, specifically, Lin teaches further monitoring the cause of failure: (Col. 9, lines 35-55).

It would have been obvious to combine teachings of Lamberton-Mangipudi-Caccavale-Badt' ideas and Lin's ideas in order to determine reasons for failure during a catastrophic event see for example, (Lin Col. 9, lines 35-55; Col. 2, lines 12-25)

Conclusions

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lan-Dai Thi Truong whose telephone number is 571-272-7959. The examiner can normally be reached on Monday- Friday from 8:30am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob A. Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ldt,
06/07/2006

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SUPERVISORY PATENT EXAMINER